



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION

**REQUEST FOR PROPOSALS # 33105-01319
AMENDMENT # 5
FOR RESPONSE TO INSTRUCTION AND
INTERVENTION UNIVERSAL SCREENERS AND
PROGRESS MONITORING TOOLS**

DATE: APRIL 24, 2019

RFP # 33105-01319 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE	COMPLETED/REVISED
1. RFP Issued		March 6, 2019	COMPLETED
2. Disability Accommodation Request Deadline	2:00 p.m.	March 11, 2019	COMPLETED
3. Pre-response Conference	9:30 a.m.	March 15, 2019	COMPLETED
4. Notice of Intent to Respond Deadline	2:00 p.m.	March 18, 2019	COMPLETED
5. Written "Questions & Comments" Deadline	2:00 p.m.	March 25, 2019	COMPLETED
6. State Response to Written "Questions & Comments"		April 4, 2019	COMPLETED
7. Amendment #2		April 9, 2019	COMPLETED
8. 2 nd Written "Questions & Comments Deadline to address SPECIFIC vendor exceptions to areas of the pro forma contract	2:00 p.m.	April 11, 2019	COMPLETED
9. Amendment #3 Posted This amendment will revise the schedule of events.		April 17, 2019	COMPLETED
10. Amendment #4 Posted		April 22, 2019	COMPLETED
11. State Response to 2 nd Written "Questions & Comments"		April 24, 2019	REVISED

12. Response Deadline	2:00 p.m.	May 1, 2019	REVISED
13. State Completion of Technical Response Evaluations		May 23, 2019	
14. State Opening & Scoring of Cost Proposals	2:00 p.m.	May 24, 2019	
15. Negotiations (Optional)		May 28-31, 2019	
16. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 3, 2019	
17. End of Open File Period		June 10, 2019	
18. State sends contract to Contractor for signature		June 12, 2019	
19. Contractor Signature Deadline	2:00 p.m.	June 14, 2019	

2. State responses to vendor requested red-lines of the pro forma contract are in the table below.

Any restatement of RFP text in the table shall NOT be construed as a change in the actual wording of the RFP document.

Pro Forma SECTION	PAGE #	Requested Red-Line	STATE RESPONSE
A	40	1 NOTE TO THE STATE: This should be revised to align with [vendor name] proposal.	The state rejects this request.
A.6.	42	2 Remove A.6.	The state rejects this request but has added clarifying language to A.6 via this amendment.
A.8.	43	3 <u>Warranty.</u> Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or same as any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. <u>The goods or services provided by the Contractor under this Contract. Such good or services</u> shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period,	The state rejects this request.

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		<p>then Contractor shall correct the Defect, at no additional charge.</p> <p>Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.</p> <p>Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.</p> <p>If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.</p>	
C.2.	42	4 Remove Volume Discount table.	The state rejects this request.
D.4.	45	<p>5 Add the following sentence to the end of the Section:</p> <p>"The Contractor shall be entitled to compensation for satisfactory authorized service completed as of the termination date but in no event shall the State be liable to Contractor for compensation for any service that has not been rendered."</p> <p>Clarifies that in the event of a termination for convenience, the contractor has the right to receive payment for services satisfactorily performed. Consistent with Pro Forma Contract from 2014.</p>	The state accepts this request.
D.5.	45	<p>6 <u>Termination for Cause.</u> If <u>either party the Contractor</u> fails to properly perform its <u>material</u> obligations under this Contract in a timely or proper manner, or if <u>the Contractor</u>either party materially violates any terms of this Contract ("Breach Condition"), <u>the State</u>either party shall have the right to</p>	This clause has been revised via this amendment.

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		immediately terminate the Contract. <u>provided that the non-breaching party notifies the breaching party of the Breach Condition and the non-breaching party fails to correct the breach with 30 days of its receipt of written notice of such breach.</u> Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for beach of this Contract.	
D.5.	45	7 <u>Termination for Cause.</u> If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract <u>if it gives the Contractor at least thirty (30) days written notice before the effective termination date and the Contractor fails to remedy or cure the breach within such thirty (30) day period.</u> Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for beach of this Contract.	This clause has been revised via this amendment.
D.9.c.	46	8 The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records <u>related to compliance with this section, D.9.,</u> shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.	The state accepts this request.
D.10.	46	9 <u>Records.</u> The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, <u>no more than once per year,</u> at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.	The state rejects this request
D.16.	47	1c <u>State Liability.</u> The State shall have no liability except as specifically provided in this Contract <u>or otherwise by law. Unless prohibited by law, in—</u> In no event will the	The state rejects this request

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		State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise.	
D.25.	48	<p>11 <u>Insurance</u>. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State <u>within thirty (30)</u> days. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (eb) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an</p>	This clause has been revised via this amendment.

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		<p>aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall <u>follow the terms and conditions of the controlling underlying policy as it pertains to primary and noncontributory conditions.</u> be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.</p> <p>Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before <u>within a reasonable timeframe of the</u> renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time,</p>	

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		<p>the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.</p> <p>The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.</p> <p>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</p> <p>a. Commercial General Liability ("CGL") Insurance</p>	

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		<p>1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).</p> <p>The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.</p> <p>b. Workers' Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:</p> <p>i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.</p> <p>2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:</p> <p>i. The Contractor employs fewer than five (5) employees;</p> <p>ii. The Contractor is a sole proprietor;</p> <p>iii. The Contractor is in the construction business or trades with no employees;</p> <p>iv. The Contractor is in the coal mining industry with no employees;</p> <p>v. The Contractor is a state or local government; or</p> <p>vi. The Contractor self-insures its</p>	

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		<p>workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.</p> <p>c. Automobile Liability Insurance</p> <p>1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).</p> <p>2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.</p> <p>d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance</p> <p>The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$405,000,00) per occurrence or claim and ten<u>five</u> million dollars (\$405,000,000) annual aggregate, covering all <u>negligent</u> acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines <u>where insurable by</u> law,, defenses, and penalties.</p> <p>Such coverage shall include data breach response expenses, in an amount not less than five-ten million dollars (\$405,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p>	

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		<p>e. Crime Insurance</p> <p>The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims <u>which are discovered by the insured during the policy period or within ninety (90) days after the effective date of such termination or cancellation; provided, however the ninety (90)-day extended period set forth herein to discover loss terminates immediately upon the effective date of any other fidelity and crime insurance obtained by the</u> insured. Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000) <u>one hundred thousand dollars (\$100,000)</u>. This insurance may be written on a claims made basis, but in the event that coverage is cancelled canceled or non-renewed, the Contractor shall purchase an extending reporting or “tail coverage” of at least two (2) years after the term.</p>	
D.25.	48	<p>12 <u>Insurance.</u> Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract, <u>as mutually agreed between the State and the Contractor.</u> Contractor’s failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance (“TDCI”); and (c) rated A- / VII or better by A.M. Best. All <u>commercial general liability, workers compensation and automobile</u></p>	This clause has been revised via this amendment.

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		<p>liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State.</p> <p>Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance, <u>cyber liability and crime insurance</u>. All policies must contain an endorsement for a waiver of subrogation in favor of the State, <u>except professional, cyber security liability and liability policies</u>. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise</p>	

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		<p>named as an additional insured.</p> <p>Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage.</p> <p>Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all <u>declaration pages</u> or required insurance policies, including endorsements required by these specifications, at any time.</p> <p>The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, <u>where such representation would be against as the right to represent the</u></p>	

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		<p>State is governed by Tenn. Code Ann. § 8-6-106.</p> <p>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor <u>as it relates to the coverage</u> below; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</p> <p>a. Commercial General Liability (“CGL”) Insurance</p> <p>1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of <u>the aforementioned cl-aims</u>another assumed in a business contract).</p> <p>The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.</p> <p>b. Workers’ Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:</p> <p>i. Workers’ compensation in an amount not less than one million dollars</p>	

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		<p>(\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.</p> <p>2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:</p> <p>i. The Contractor employs fewer than five (5) employees;</p> <p>ii. The Contractor is a sole proprietor;</p> <p>iii. The Contractor is in the construction business or trades with no employees;</p> <p>iv. The Contractor is in the coal mining industry with no employees;</p> <p>v. The Contractor is a state or local government; or</p> <p>vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.</p> <p>c. Automobile Liability Insurance</p> <p>1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).</p> <p>2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.</p> <p>d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance</p> <p><u>The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,00) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering amounts contractor is legally obligated pay for damages due to errors and omissions, resulting in a security or privacy breach.</u></p>	

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		<p><u>Such coverage shall include data breach response expenses, in an amount not less than three million dollars (\$3,000,000), including but not limited to consumer notification, where required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring. \$5,000,000 of Cyber Extortion is included on this policy.</u></p> <p><u>The following insuring agreements and coverages are included in the Contractor's Cyber Security Liability Policy: Loss of Digital Assets; Security Event Costs (limited to \$3,000,000); Network Security & Privacy Liability and Cyber Extortion Threat. The Special Expenses Aggregate Limit is \$2,000,000.</u></p> <p><u>The following Sub limits are included: Customer Notification Expenses \$2,000,000 and Public Relations Expenses \$1,000,000.</u></p> <p><u>This coverage is written on a claims made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting period or "tail coverage" of at least two (2) years after the term.</u></p> <p><u>Contractor also has coverage limits on a separate publishers' professional liability policy as follows: \$5,000,000 per claim and \$5,000,000 annual policy aggregate.</u></p> <p>_____The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,00) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p>	

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		<p>Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p>e. Crime Insurance</p> <p>The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) year with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p> <p>Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled canceled or non-renewed, the Contractor shall purchase an extending reporting or "tail coverage" of at least two (2) years after the term.</p>	
D.25.	48	<p>13 Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to</p>	This clause has been revised via this amendment.

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		<p>renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State <u>within 30 days of receiving notice from its insurer</u>. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State.</p> <p>Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the</p>	

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		<p>Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.</p> <p>Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before <u>after Contractor's notification</u> of renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.</p> <p>The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this</p>	

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		<p>Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.</p> <p>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</p> <p>a. Commercial General Liability (“CGL”) Insurance</p> <p>1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).</p> <p>The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.</p> <p>b. Workers’ Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers’ compensation and</p>	

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		<p>employer liability insurance, the Contractor shall maintain:</p> <p>i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.</p> <p>2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:</p> <p>i. The Contractor employs fewer than five (5) employees;</p> <p>ii. The Contractor is a sole proprietor;</p> <p>iii. The Contractor is in the construction business or trades with no employees;</p> <p>iv. The Contractor is in the coal mining industry with no employees;</p> <p>v. The Contractor is a state or local government; or</p> <p>vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.</p> <p>c. Automobile Liability Insurance</p> <p>1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).</p> <p>2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.</p> <p>d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance</p> <p>The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than fiveten million dollars (\$405,000,00) per occurrence or</p>	

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		<p>claim and fiveten million dollars (\$540,000,000) annual aggregate, covering all acts errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p> <p>Such coverage shall include data breach response expenses, in an amount not less than fiveten million dollars (\$405,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p>e. Crime Insurance</p> <p>The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) year with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p> <p>Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims made basis, but in the event that coverage is cancelled</p>	

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		canceled or non-renewed, the Contractor shall purchase an extending reporting or “tail coverage” of at least two (2) years after the term.	
D.25.(d)	50-51	<p>14 Change amounts of insurance from \$10 million per occurrence and in aggregate to \$3 million per occurrence and in aggregate.</p> <p>Sets insurance at the level that is consistent with Riverside’s actual policy limits.</p>	The state has revised the amount to \$5 million.
D.25.(e)	51	<p>15 Delete the requirement for crime insurance.</p> <p>Crime insurance is not appropriate for the type of products/services being sought in the RFP or for the types of products/services that Riverside provides.</p>	The state rejects this request.
D.26.	51	<p>16 Delete the first paragraph of Section D26 and replace it with the following text:</p> <p>“The Contractor agrees to indemnify and hold harmless the State of Tennessee and its officers, agents and employees (“Indemnitees”) from and against any and all claims, liabilities, losses and causes of action that arise from a third party claim against one or more of the Indemnitees to the extent such third party claim arises out of Contractor’s material breach of its obligations under this Contract or its gross negligence or willful misconduct. The Contractor further agrees that it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees and other reasonable and necessary litigation expenses for the State to enforce the terms of this Contract.”</p> <p>Riverside is willing to provide indemnification for claims asserted against the State or other Indemnitees that are caused by its breach of the Contract or its bad acts.</p> <p>We believe that unlimited uncapped first party indemnity for any claims, whether or not caused by Riverside failures or bad acts is not a commercially reasonable terms in a contract of this nature.</p>	The state rejects this request.
D.29.	52	17 <u>Debarment and Suspension</u> . The Contractor	The state rejects this request.

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		<p>certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:</p> <p>a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;</p> <p>c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and</p> <p>d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p> <p>The Contractor shall provide immediate prompt written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.</p>	
E.2.	52-53	<p>18 <u>Confidentiality of Records</u>. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided by either party to the other to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal</p>	This clause has been revised via this amendment.

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		<p>law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the <u>Contractor receiving party</u> to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.</p> <p>The <u>Contractor's parties'</u> obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract <u>receiving party</u>; previously possessed by the receiving party the Contractor without written obligations to the <u>State disclosing party</u> to protect it; acquired by the <u>Contractor receiving party</u> without written restrictions against disclosure from a third party which, to the <u>Contractor's receiving party's</u> knowledge, is free to disclose the information; independently developed by the <u>Contractor receiving party</u> without the use of the <u>State's disclosing party's</u> information; or, disclosed by the State disclosing party <u>to others without restrictions against disclosure; or, information required to be disclosed in accordance with the applicable laws.</u> Nothing in this paragraph shall permit Contractor the receiving party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the <u>State disclosing party</u> or third parties.</p> <p>It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.</p>	
E.3.	53	<p>¹⁹ <u>Intellectual Property Indemnity.</u> The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any <u>third party</u> claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and</p>	This clause has been revised via this amendment.

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		<p>indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.</p> <p><u>The Contractor's obligations under this Section will not apply to any infringement to the extent arising out of (a) any use or combination of the Contractor's or its licensors' products and services with any other products, goods, services or other items furnished by anyone other than the Contractor; (b) any modification or change not made by the Contractor; (c) the use of an infringing version of the products or services when a comparable non-infringing version has been made available to the State; or (d) any products developed to specifications which the State has supplied or required of the Contractor.</u></p> <p><u>In the event that the Contractor reasonably believes it will be required to discontinue use of the products and/or services because such products and/or services might infringe intellectual property rights of a third party, the Contractor will, at its option, either (a) obtain for the State the right to continue use of the products and/or services, or (b) modify the relevant product and/or service to make it non-infringing. If the Contractor is not reasonably able to accomplish the foregoing, the Contractor may terminate the license of the infringing product and/or service and refund the State a pro rata portion of any pre-paid fees the State paid for such product and/or service. THIS SECTION STATES THE ENTIRE LIABILITY OF [VENDOR NAME] WITH RESPECT TO INFRINGEMENT BY ANY CONTRACTOR PRODUCT OR RESULTING FROM THE PERFORMANCE OF SERVICES BY THE CONTRACTOR.</u></p>	

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E.3.	53	<p>20 Clarify that the infringement covered by this indemnity arises out of a claim that Contractor's products or services or the State's licensed use thereof infringes third party IP rights.</p> <p>As drafted, it is not clear that the infringement indemnity is limited to claims relating to Contractor's products or services.</p>	Proposed revision is not necessary.
E.4.	53	<p>21 <u>Software License Warranty</u>. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes, <u>in accordance with the Contractor Customer Terms and Conditions available at https://www[VENDORNAME].com/customer-terms/</u>.</p>	The state rejects this request.
E.7.	53-54	<p>22 <u>Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act</u>. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.</p> <p>The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, et seq., known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract. <u>Notwithstanding the foregoing, Contractor may use and share with agents, partners,</u></p>	This clause has been revised via this amendment.

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		<p><u>and researchers non-personally identifiable information collected hereunder, including data that has been de-identified in accordance with FERPA, for legitimate educational purposes and may distribute findings, analysis and reports based upon such non-PII data.</u></p> <p>Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State <u>in accordance with applicable laws.</u> within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section, <u>to the extent any such breach was caused by the Contractor.</u></p>	
E.10.	54-55	<p>23 <u>Personally Identifiable Information.</u> While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the</p>	The state rejects this request.

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		<p>security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State <u>in accordance with applicable laws</u>; (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, <u>upon the request of the State the</u> Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.</p> <p>The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours <u>in accordance with applicable laws</u> after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.</p>	

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E.10.	54-55	<p>24 Revise the last sentence of the first paragraph of Section 8 regarding the return of PII upon termination of the Agreement to clarify that Contractor is not obligated to return any de-identified information or information that is permitted or required to be retained under applicable law.</p> <p>Clarify that the no-cost credit monitoring for affected individuals in the event of an Unauthorized Disclosure is limited to one year.</p> <p>The carve out is consistent with revised Section A8 (permitting the use of de-identified data) and recognizes that once data is de-identified and aggregated with other similar information, it cannot be reverse engineered and extracted.</p> <p>Credit monitoring time limit is consistent with industry standard practices.</p>	The state accepts this request.
E.11.a.(4)	55	<p>25 Remove provision permitting the State to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.</p> <p>Riverside does not permit third parties to conduct penetration testing on its environment and may not be in a position to require its vendors to do so for externally hosted systems. Compliance with the other provisions of this section should provide adequate assurance for the State.</p>	This clause has been revised via this amendment.
E.11.(c)	56	<p>26 Delete. Riverside does not permit third parties to conduct IT audits of its systems or facilities. Compliance by Riverside with the provisions regarding its own conduct of SOC Type II audits should be sufficient to provide assurance of Riverside's compliance with its security obligations.</p>	The state rejects this request.
E.11.	55-57	<p>27 Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as</p>	This clause has been revised via this amendment.

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		<p>follows:</p> <p>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</p> <p>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.</p> <p>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.</p> <p>If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.</p> <p>No additional funding shall be allocated for</p>	

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		<p>these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.</p> <p>(4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.</p> <p>(5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State</p> <p>(6) Upon termination of this Contract and in consultation with the State, <u>upon request of the State</u>, the Contractor shall destroy all, the State, <u>upon request of the State</u>, the Contractor shall destroy all Confidential e Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.</p> <p>b. Minimum Requirements</p> <p>(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended</p>	

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		<p>periodically. The State's Enterprise Information Security Policies document is found at the following URL:</p> <p>https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html.</p> <p>(2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.</p> <p>(3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.</p> <p>c. Comptroller Audit Requirements</p> <p>Upon reasonable notice and at any reasonable time, <u>no more than once per year</u>, Comptroller Audit Requirements</p> <p>the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.</p> <p>The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of</p>	

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		<p>duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.</p> <p><u>Notwithstanding the foregoing, as a vendor to multiple state and district customers, the Contractor cannot allow direct access to its systems. Upon request, Contractor will provide results of the most recent third party security assessment report that is relevant to State's data.</u></p> <p>The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.</p> <p>For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.</p> <p>Each party shall bear its own expenses incurred while conducting the information technology controls audit.</p> <p>d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:</p> <p>(1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:</p> <p>i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: six hours</p> <p>ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration</p>	

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		<p>of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24 hours</p> <p>(2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.</p>	
E.11.		<p>28 Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <p>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</p> <p>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.</p> <p>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in</p>	This clause has been revised via this amendment.

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		<p>accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall <u>upon request</u> provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s); <u>and/or</u> provide the State with the Contractor's <u>and</u> <u>or</u> Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.</p> <p>If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.</p> <p>No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.</p> <p>(4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify</p>	

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		<p>the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow Environment. The Contractor shall allow share with the State, at its option, to perform the high-level results of its Penetration Tests and Vulnerability Assessments on the Processing Environment.</p> <p>(5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State</p> <p>(6) Upon termination of this Contract and in consultation with the State, the Contractor shall deletedestroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction-deletion to the State within ten (10) business days after destructionsuch deletion shall provide a written confirmation of destruction-deletion to the State within ten (10) business days after destructionsuch deletion.</p> <p>b.</p> <p>b. Minimum Requirements</p> <p>(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:</p> <p>https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html.</p> <p>(2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.</p> <p>(3) If the Application requires middleware or database software, Contractor</p>	

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		<p>shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.</p> <p>c. Comptroller Audit Requirements</p> <p>Upon reasonable notice <u>in writing of at least thirty (30) days</u> and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.</p> <p>The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. <u>In no event shall the audit include a review of any area of the Contractor's systems or application where the audit scope would intrude upon the privacy of other tenants of the multi-tenant architecture of the system.</u> The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.</p> <p>The audit may include interviews with</p>	

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		<p>technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.</p> <p>For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.</p> <p>Each party<u>The State</u> shall bear its own<u>all</u> expenses incurred while conducting the information technology controls audit.</p> <p>d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:</p> <p>(1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:</p> <p>i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: six hours</p> <p>ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24 hours</p> <p>(2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and</p>	

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		RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.	
Add New Clause	57	25 <u>No Implied Warranties: The products and services are provided "as is". The Contractor expressly disclaims any warranty not explicitly set forth in this Agreement.</u>	The state rejects this request.
Add New Clause		30 <u>Standard Contractor Terms: The Contractor's products and services are governed by its standard Customer Terms & Conditions available at https://www.[VENDORNAME].com/customer-terms/</u>	The state rejects this request.

3. Delete RFP section 6.6, Pro Forma Contract Section A.6 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- A.6. The Contractor shall provide a volume discount as outlined in Contract section C.2 and based on the number of students with whom the school district will use the Universal Screener or Progress Monitoring Tool and permit school districts to form a consortium (e.g., school districts forming a group based on geographic area or other criteria) in order to meet the number of students needed to be eligible for the volume discount.

4. Delete RFP section 6.6, Pro Forma Contract Section D.4 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- D.4. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. The Contractor shall be entitled to compensation for satisfactory authorized service completed as of the termination date but in no event shall the State be liable to Contractor for compensation for any service that has not been rendered.

5. Delete RFP section 6.6, Pro Forma Contract Section D.5 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- D.5. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

6. Delete RFP section 6.6, Pro Forma Contract Section D.9.c in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records **related to compliance with this section, D.9.,** shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

7. Delete RFP section 6.6, Pro Forma Contract Section D.25 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- D.25. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract **as mutually agreed between the State and the Contractor, consent by either Party shall not be unreasonably withheld.** Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall **immediately** notify the State **within thirty (30) days upon learning of the loss in coverage.** All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All **commercial general liability, workers compensation, and automobile liability** coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance, **technology professional liability (errors & omissions)/cyber liability.** All policies must contain an endorsement for a waiver of subrogation in favor of the State, **except professional liability (errors and omissions) insurance, technology professional liability (errors & omissions)/cyber liability.** ~~Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State.~~ The deductible **in whatever amount, as well as any** premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall **supplement the terms and conditions of the controlling underlying policy as it pertains to primary and noncontributory conditions.** ~~be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.~~

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall

provide the COI ~~ten (10) business days prior to the Effective Date and again thirty (30) calendar days before~~ within a reasonable timeframe, not to exceed thirty (30) calendar days after the Contractor's notification of the renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all declaration pages, signed by an authorized representative of the insurance company, required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as set forth in, ~~as the right to represent the State is governed by~~ Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor as it relates to the coverage below; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of the ~~the~~ ~~mentioned claims. another assumed in a business contract~~).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. **Automobile Liability Insurance**

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. **Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance**

The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all negligent acts while performing professional services, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. **Crime Insurance**

The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims which are discovered by the insured during the policy period or within one (1) year after the effective date of such termination or cancellation; provided, however the one (1) year extended period set forth herein to

discover loss terminates immediately upon the effective date of any other fidelity and crime insurance obtained by the insured. ~~with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.~~

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **one hundred thousand dollars (\$100,000)**. This insurance may be written on a claims made basis, ~~but in the event that coverage is cancelled canceled or non-renewed, the Contractor shall purchase an extending reporting or "tail coverage" of at least two (2) years after the term.~~

8. Delete RFP section 6.6, Pro Forma Contract Section E.2 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- E.2. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided **by either Party to the other** ~~to the Contractor by the State or acquired by the Contractor on behalf of the State~~ shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the ~~Contractor~~ **receiving Party** to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The ~~Contractor's~~ **Parties'** obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the ~~Contractor of this Contract receiving Party~~; previously possessed by **the receiving party** ~~the Contractor~~ without written obligations to the ~~State~~ **disclosing Party** to protect it; acquired by the ~~Contractor~~ **receiving Party** without written restrictions against disclosure from a third party which, to the ~~Contractor's~~ **receiving Party's** knowledge, is free to disclose the information; independently developed by the ~~Contractor~~ **receiving Party** without the use of the ~~State's~~ **disclosing Party's** information; ~~or, disclosed by the State-disclosing Party to others without restrictions against disclosure; or,~~ **information required to be disclosed in accordance with the applicable laws**. Nothing in this paragraph shall permit ~~Contractor~~ **the receiving Party** to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the ~~State-disclosing Party~~ or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract. **All obligations regarding Confidential Information are subject to the provisions of the Tennessee Public Records Act.**

9. Delete RFP section 6.6, Pro Forma Contract Section E.3 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- E.3. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement by Contractor's deliverables hereunder. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all reasonable legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising

from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, may: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

10. Delete RFP section 6.6, Pro Forma Contract Section E.7 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- E.7. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, et seq., known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract. **Notwithstanding the foregoing, Contractor may use and share with agents, partners, and researchers non-personally identifiable information collected hereunder, including data that has been de-identified in accordance with FERPA, for legitimate educational purposes and may distribute findings, analysis and reports based upon such non-PII data.**

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section, **to the extent any such breach was caused by the Contractor.**

11. Delete RFP section 6.6, Pro Forma Contract Section E.10 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would

cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII. **The Contractor is not obligated to return any de-identified information or information that is permitted or required to be retained under applicable law.**

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure **for one (1) year**. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

12. Delete RFP section 6.6, Pro Forma Contract Section E.11 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

E.11. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State

with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. **The Contractor shall provide the results of an independent third party penetration test or** allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, **upon request of the State**, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with

current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: six hours
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24 hours
- (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO

requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

13. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.